

AUTHORIZING PAYMENT TO THE EMPIRE DISTRICT ELECTRIC CO.  
FOR REASONABLE COSTS OF PROTECTING ITS OZARK BEACH  
POWER PLANT FROM THE BACKWATER OF BULL SHOALS DAM

JULY 3 (legislative day, JUNE 27), 1952.—Ordered to be printed

Mr. CHAVEZ, from the Committee on Public Works, submitted the  
following

## REPORT

[To accompany H. R. 7241]

The Committee on Public Works, to whom was referred the bill (H. R. 7241) to authorize payment to the Empire District Electric Co. for reasonable costs of protecting its Ozark Beach power plant from the backwater of Bull Shoals Dam, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The Bull Shoals Dam and Reservoir was authorized by the Flood Control Act of August 18, 1941 (55 Stat. 638), as a multiple-purpose unit in the general comprehensive plan for flood control and other purposes in the White River Basin, Ark., and Mo. The dam site is located at mile 418.6 on White River near Cotter, Ark., and the reservoir will extend northwest along White River about 87 miles to the Ozark Beach Dam and hydroelectric power plant, near Forsyth, Mo. Construction of the Bull Shoals Dam was initiated by the Corps of Engineers in 1946 and is practically complete. Water is now being impounded in the reservoir.

The Ozark Beach Dam and hydroelectric power plant was authorized by an act of Congress approved February 4, 1911 (36 Stat. 897). The plans were approved by the Chief of Engineers and the Secretary of War on August 14, 1912. The project was completed in 1913 and partly remodeled in 1930 and 1931 by the owner, the Empire District Electric Co., of Joplin, Mo., a private utility company. The total hydroelectric power installation at the plant is 16,000 kilowatts.

The purpose of this bill is to authorize payment to the Empire District Electric Co., for the reasonable costs of protecting its dam and power plant from the backwater resulting from the operation of the Bull Shoals Dam and Reservoir.

During operation of the Bull Shoals Reservoir for flood control, backwater will under certain conditions damage the Ozark Beach Dam and power plant and render the power plant inoperative, unless protective works are provided. The necessary facilities consist of a wall or similar protecting device outside the power plant on the downstream side; raising the transmission-line crossing; placing stone riprap or other suitable protection for the earthen left-bank section of the dam; and protection of other parts of the plant, including the hydroelectric generating units.

The elevation of the normal power pool in Bull Shoals Reservoir is 654 feet above mean sea level, and the top of the flood-control pool is designed for elevation 695 feet. The elevation at which serious damage at the Ozark Beach plant begins is 689 feet, which will be reached by backwater in the Bull Shoals Reservoir at that point when the flood-control pool reaches elevation 684 feet at the Bull Shoals Dam. Such damages would continue until downstream conditions along White River would permit release of the stored floodwaters. Operation of the reservoir to prevent damages to the Ozark Beach plant would thus sacrifice 11 feet of flood-control storage in the reservoir, if operated to obtain the maximum power benefits.

At the time the Bull Shoals project was authorized and construction thereon initiated, the Corps of Engineers was of the opinion that protective works for the Ozark Beach Dam and power plant would be necessary and that such protection could be provided. A later study of the legal technicalities involved revealed that the Department of the Army did not have the authority to provide the necessary protective works. Details of the protection will be the subject of negotiations between the Corps of Engineers and the Empire District Electric Co. The estimated cost of the protective works to be provided is approximately \$700,000.

The committee is of the opinion that the protective works for the Ozark Beach Dam and power plant are properly a part of the Bull Shoals project, and should be provided at Federal expense. Without these protective works the Bull Shoals Reservoir cannot be operated to derive the maximum possible benefits, and, in addition to the loss of power revenues, the Government might be liable for damage claims from the Empire District Electric Co. for damages to their plant and loss of revenue during periods when the plant is rendered inoperative by high elevations in Bull Shoals Reservoir.

The Department of the Army has no objection to enactment of this legislation as evidenced by the following letter to the Public Works Committee of the House of Representatives:

DEPARTMENT OF THE ARMY,  
Washington 25, D. C., May 9, 1952.

HON. CHARLES A. BUCKLEY,  
*Chairman, Committee on Public Works,  
House of Representatives.*

DEAR MR. BUCKLEY: Reference is made to your letter of March 27, 1952, enclosing a copy of H. R. 7241, Eighty-second Congress, a bill to authorize payment to the Empire District Electric Co. for reasonable costs of protecting its Ozark Beach power plant from the backwater of Bull Shoals Dam, and requesting the views of the Department of the Army with respect to the advisability of enacting the bill.

This bill provides as follows:

"That the Chief of Engineers be, and he is hereby, authorized to make such payment to the Empire District Electric Co. as in his judgment will cover the

reasonable cost of protective works to prevent physical damage to the said company's Ozark Beach Dam and power plant by backwater from the Bull Shoals Dam."

The Ozark Beach Dam and hydroelectric power plant is located on the White River near the town of Forsyth, Mo. It was authorized by an act of Congress approved February 4, 1911 (36 Stat. 897), and plans therefor were approved by the Chief of Engineers and the Secretary of War in an instrument dated August 14, 1912. The structure was completed in 1913. The power plant was partly remodeled in 1930 and 1931. The dam and plant are owned by the Empire District Electric Co., of Joplin, Mo.

The construction by the United States of the Bull Shoals Dam on the White River, for flood control and power purposes, was authorized by the Flood Control Act of August 18, 1941 (55 Stat. 638, 645). The work in connection with the construction of this dam is practically completed. The dam is about 86 miles downstream from the Ozark Beach Dam and hydroelectric plant of the Empire District Electric Co.

Backwater from the Bull Shoals Dam during the storing of floodwaters will under certain conditions, damage the Ozark Beach Dam and hydroelectric plant unless protective works are provided.

This Department does not now have any authority to provide the works necessary to protect the Ozark Beach plant. It is well settled that, under the commerce clause of the Constitution of the United States, the Federal Government has the right to occupy and use, for the purposes of navigation and flood control, the bed of a navigable stream between the ordinary high water lines without making compensation therefor. Furthermore, the Congress can revoke the permit of the Empire District Electric Co. at any time without liability for damages resulting therefrom.

The bill, H. R. 7241, if enacted into law, will authorize the Chief of Engineers to pay to the Empire District Electric Co. such amount "as in his judgment will cover the reasonable cost of protective works to prevent physical damage to the said company's Ozark Beach Dam and power plant by backwater from the Bull Shoals Dam." In the case of the Willow River Power Co. that company had a dam and hydroelectric power plant at the confluence of the Willow River with the St. Croix River in Wisconsin. The United States built a dam on the Mississippi River near Red Wing, Minn., below the point where the St. Croix flows into the Mississippi and about 30 miles downstream from the Willow River Power Co.'s plant. This dam created a pool which extended upstream on the St. Croix River to the Willow River Power Co.'s plant and raised the level of the St. Croix at such point about 3 feet, which diminished the plant's capacity to produce electric power. After a careful consideration it was determined that the damage caused to the Willow River Power Co. by the building of the dam across the Mississippi River amounted to the sum of \$25,000. The Congress by S. 2031, Eighty-first Congress, awarded to the Willow River Power Co. the sum of \$25,000 together with interest thereon at 4½ percent per annum from August 12, 1938, to the date of the payment of the award, in settlement of the claim of said company for the damages sustained by it as the result of the construction of the dam across the Mississippi River near Red Wing (Private Law 378, 81st Cong., approved February 17, 1950).

While the Department of the Army knows of no precedent where the Congress has provided in advance for the payment of the cost of the construction of protective works, such as those contemplated in the instant case, it is believed that under the facts in this case the Empire District Electric Co., is equitably entitled to such protection. The Department, therefore, has no objection to the enactment of this bill.

While the exact cost of the protective works referred to in this bill has not been officially determined by the Department of the Army, the Corps of Engineers has estimated that such cost may amount to as much as \$500,000.

If this bill is favorably considered by the Congress, it is recommended that after the word "Company", on line 5 of the bill, there be inserted a comma and the words "of Joplin, Missouri,".

Inasmuch as the committee has requested that this report be expedited, it is submitted without a determination by the Bureau of the Budget as to whether it conforms to the program of the President.

Sincerely yours,

FRANK PACE, Jr.,  
Secretary of the Army.

